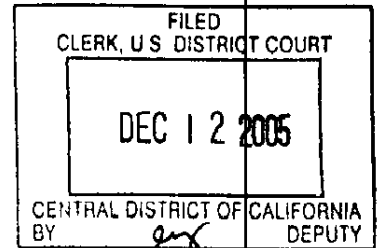
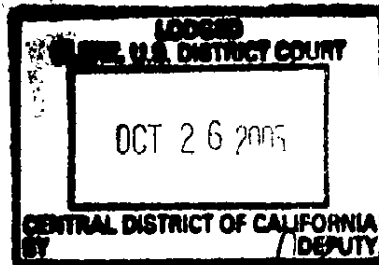
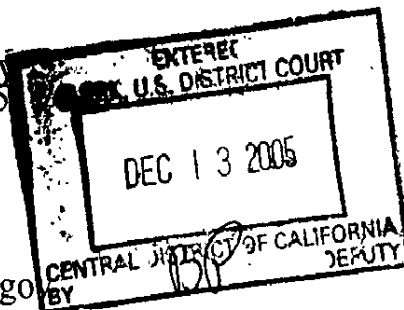


ORIGINAL

KELLY A. JOHNSON  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department Of Justice  
ROBERT D. MULLANEY  
Trial Attorney  
California State Bar No. 116441  
Environmental Enforcement Section  
U.S. Department of Justice  
301 Howard Street, Suite 1050  
San Francisco, CA 94105  
Tel: (415) 744-6491  
Fax: (415) 744-6476  
E-mail: Robert.Mullaney@usdoj.gov



DEBRA WONG YANG  
United States Attorney  
Central District of California  
LEON W. WEIDMAN  
Chief, Civil Division  
MONICA L. MILLER  
Assistant United States Attorney  
California State Bar No. 157695  
Federal Building, Suite 7516  
300 North Los Angeles Street  
Los Angeles, CA 90012  
Tel: (213) 894-4061  
Fax: (213) 894-7819  
E-mail: Monica.Miller@usdoj.gov



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Attorneys for Plaintiff United States of America

[Attorneys for Plaintiff California DTSC on next page]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

UNITED STATES OF AMERICA  
and CALIFORNIA DEPARTMENT  
OF TOXIC SUBSTANCES  
CONTROL,

Plaintiffs,

v.

ALLEGIANCE HEALTHCARE  
CORPORATION and PHILIP  
MORRIS USA INC.,

Defendants.

*CAS(RZx)*  
Case No. CV05-7520 ~~DSF (JWJx)~~

CONSENT DECREE

9

1 BILL LOCKYER  
Attorney General of the State of California  
2 THEODORA BERGER  
Senior Assistant Attorney General  
3 DONALD A. ROBINSON  
Deputy Attorney General  
4 ANN RUSHTON (Cal. Bar No. 62597)  
Deputy Attorney General  
5 California Department of Justice  
300 South Spring Street  
6 Los Angeles, California 90013  
Tel: (213) 897-2608  
7 Fax: (213) 897-2802  
E-mail: Ann.Rushton@doj.ca.gov  
8 Attorneys for Plaintiff California  
Department of Toxic Substances Control  
9  
10  
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# I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the California Department of Toxic Substances Control ("DTSC") filed a joint complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

B. The United States and DTSC in their complaint seek, inter alia: (1) reimbursement of costs incurred by EPA, the United States Department of Justice, and DTSC for response actions at the Baldwin Park Operable Unit (Area 2) of the San Gabriel Valley Superfund Sites, Areas 1-4, in Los Angeles County, California ("the BPOU Area"), together with accrued interest; and (2) performance of studies and response work by the defendants at the BPOU Area consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. Each defendant that has entered into this Consent Decree ("Settling Defendant") does not admit, and specifically denies: (i) any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint; and (ii) that the release or threatened release of hazardous substance(s) at or from the BPOU Area constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

D. The work required to implement the Record of Decision ("ROD") for the BPOU Area, as supplemented by the Explanation of Significant Differences ("ESD"), is being performed by other parties pursuant to EPA's Unilateral Administrative Order No. 2000-13 (as amended).

E. The United States, DTSC, and the Settling Defendants agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid

1 prolonged and complicated litigation between the Parties, and that this Consent  
2 Decree is fair, reasonable, and in the public interest.

3 NOW, THEREFORE, with the consent of the Parties to this Decree, it  
4 is hereby ORDERED, ADJUDGED, AND DECREED:

## 5 II. JURISDICTION

6 1. This Court has jurisdiction over the subject matter of this action pursuant  
7 to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 6973(a), 9606, 9607, and  
8 9613(b). This Court also has personal jurisdiction over the Settling Defendants.  
9 Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C.  
10 § 1391(b) and (c). Solely for the purposes of this Consent Decree and the  
11 underlying complaint, each Settling Defendant waives all objections and defenses  
12 that it may have to jurisdiction of the Court or to venue in this District. The  
13 Settling Defendants consent to and shall not challenge the terms of this Consent  
14 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## 15 III. PARTIES BOUND

16 2. This Consent Decree applies to and is binding upon the following  
17 parties: the United States; DTSC; and each Settling Defendant and its respective  
18 successors and assigns. Any change in ownership or corporate status of a Settling  
19 Defendant including, but not limited to, any transfer of assets or real or personal  
20 property, shall in no way alter such Settling Defendant's responsibilities under this  
21 Consent Decree. Each Settling Defendant's obligations under this Consent Decree  
22 are independent of the other Settling Defendant's obligations, and each Settling  
23 Defendant is entitled to the benefits of this Consent Decree in accordance with its  
24 performance of its own obligations hereunder.

## 25 IV. DEFINITIONS

26 3. Unless otherwise expressly provided herein, terms used in this Consent  
27 Decree which are defined in CERCLA, RCRA, or in regulations promulgated  
28 under CERCLA or RCRA shall have the meaning assigned to them in CERCLA or

1 RCRA or in such regulations. Whenever terms listed below are used in this  
2 Consent Decree or in the appendices attached hereto and incorporated hereunder,  
3 the following definitions shall apply:

4 "BPOU Area" shall mean the Baldwin Park Operable Unit (Area 2) of the  
5 San Gabriel Valley Superfund Sites, Areas 1-4, in and near the cities of Azusa,  
6 Irwindale, and Baldwin Park, in Los Angeles County, California, and depicted  
7 generally on the map attached as Appendix A.

8 "CERCLA" shall mean the Comprehensive Environmental Response,  
9 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

10 "Certification of Completion" shall mean EPA's written determination that  
11 the remedial action has been performed and that the performance standards have  
12 been achieved.

13 "Consent Decree" or "Decree" shall mean this Decree and all appendices  
14 attached hereto (listed in Section XVIII). In the event of conflict between this  
15 Decree and any appendix, this Decree shall control.

16 "Day" shall mean a calendar day unless expressly stated to be a working  
17 day. "Working day" shall mean a day other than a Saturday, Sunday, or federal  
18 holiday. In computing any period of time under this Consent Decree, where the  
19 last day would fall on a Saturday, Sunday, or federal holiday, the period shall run  
20 until the close of business of the next working day.

21 "DOJ" shall mean the United States Department of Justice and any  
22 successor departments, agencies, or instrumentalities of the United States.

23 "DTSC" shall mean the California Department of Toxic Substances Control  
24 and any predecessor or successor departments or agencies of DTSC.

25 "DTSC Response Costs" shall mean: (i) all past costs, including, but not  
26 limited to, direct and indirect costs that DTSC has incurred at or in connection  
27 with the BPOU Area prior to the entry of this Consent Decree, and (ii) all future  
28 costs (including, but not limited to, direct and indirect costs) related to the

1 implementation or oversight of the Work, that DTSC will incur at or in connection  
2 with the BPOU Area.

3 "EPA" shall mean the United States Environmental Protection Agency and  
4 any successor departments, agencies, or instrumentalities of the United States.

5 "EPA Hazardous Substance Superfund" shall mean the Hazardous  
6 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

7 "Explanation of Significant Differences" or "ESD" shall mean the  
8 Explanation of Significant Differences relating to the BPOU Area issued by EPA  
9 in May 1999. The ESD is attached as Appendix C.

10 "Interest" shall mean interest at the rate specified for interest on investments  
11 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,  
12 compounded annually on October 1 of each year, in accordance with 42 U.S.C.  
13 § 9607(a). The applicable rate of interest shall be the rate in effect at the time the  
14 interest accrues. The rate of interest is subject to change on October 1 of each  
15 year.

16 "Paragraph" shall mean a portion of this Consent Decree identified by an  
17 Arabic numeral or an upper case letter.

18 "Parties" shall mean the United States, DTSC, and the Settling Defendants.

19 "Plaintiffs" shall mean the United States and DTSC.

20 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.  
21 § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

22 "ROD" shall mean the EPA Record of Decision and all attachments thereto  
23 relating to the interim remedy for the BPOU Area, which was signed by the  
24 delegate of the Regional Administrator, EPA Region 9 on March 31, 1994. The  
25 ROD is attached as Appendix B.

26 "Remedial Action" shall mean those activities, except for Operation and  
27 Maintenance, undertaken to implement the ROD, as supplemented by the ESD.

28 "Response Costs" shall mean: (i) all past costs, including, but not limited

1 to, direct and indirect costs, that the United States has incurred at or in connection  
2 with the BPOU Area prior to the entry of this Consent Decree, and (ii) all future  
3 costs (including, but not limited to, direct and indirect costs) related to the  
4 implementation or oversight of the Work, that the United States will incur at or in  
5 connection with the BPOU Area.

6 "Section" shall mean a portion of this Consent Decree identified by a  
7 Roman numeral.

8 "Settling Defendants" shall mean the Settling Allegiance Healthcare  
9 Defendants and the Settling Philip Morris Defendants.

10 "Settling Allegiance Healthcare Defendants shall mean the following  
11 entities: Allegiance Healthcare Corporation, Allegiance Corporation, Baxter  
12 Healthcare Corporation, Baxter International, Inc., Baxter Travenol Laboratories,  
13 Inc., Baxter Acquisition Sub., Inc., Travenol Laboratories, Inc., American Hospital  
14 Supply Corporation, and Cardinal Health, Inc., and all predecessor or successor or  
15 related corporate entities bearing potential liability under CERCLA, RCRA, or  
16 State law counterparts for matters addressed in this Consent Decree arising in  
17 whole or in part from the ownership or operation of the property or facility located  
18 at 4401 Foxdale Avenue in Irwindale, California.

19 "Settling Philip Morris Defendants" shall mean the following entities:  
20 Philip Morris USA Inc., successor to Philip Morris Incorporated, and all  
21 predecessor or successor or related Philip Morris corporate entities bearing  
22 potential liability under CERCLA, RCRA, or State law counterparts for matters  
23 addressed in this Consent Decree arising in whole or in part from the ownership or  
24 operation of the former U.S. Relay facility at 717 North Coney Avenue in Azusa,  
25 California.

26 "Site" shall mean the San Gabriel Valley Superfund Sites, Areas 1-4, in Los  
27 Angeles County, California.

28 "United States" shall mean the United States of America, including its



1 departments, agencies, and instrumentalities.

2 "Work" shall mean all activities required to be performed to implement the  
3 ROD, as supplemented by the ESD, or to oversee the implementation of the ROD,  
4 as supplemented by the ESD, at or in connection with the BPOU Area.

# 5 V. STATEMENT OF PURPOSE

6 4. By entering into this Consent Decree, the mutual objectives of the  
7 Parties, as more precisely described in the terms of this Consent Decree, are:

8 a. To reach a settlement among the Parties with respect to the BPOU Area  
9 that allows each of the Settling Defendants to make a cash payment, which  
10 includes a premium, to resolve any claims for civil or administrative liability under  
11 Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9607, 9607, and RCRA Section  
12 7003, 42 U.S.C. § 6973, and their respective State law counterparts, for interim  
13 response actions and for response costs related to interim response actions  
14 incurred and to be incurred at or in connection with the BPOU Area, as provided  
15 in Section VIII (Covenants Not to Sue by Plaintiffs) and Section IX (Reservation  
16 of Rights) of this Decree;

17 b. To resolve any claims of Settling Defendants that could have been  
18 asserted against the United States and DTSC with regard to the BPOU Area as  
19 provided in Section X (Covenants Not to Sue by Settling Defendants) of this  
20 Decree;

21 c. To simplify the remaining administrative and judicial enforcement  
22 activities concerning the BPOU Area by resolving the United States' and DTSC's  
23 claims against the Settling Defendants for interim response actions and for  
24 response costs related to interim response actions incurred and to be incurred at or  
25 in connection with the BPOU Area, as provided in Section VIII (Covenants Not to  
26 Sue by Plaintiffs) and Section IX (Reservation of Rights) of this Decree; and

27 d. To provide for contribution protection for the Settling Parties with  
28 respect to matters addressed in this Consent Decree pursuant to Section 113(f)(2)

1 of CERCLA, 42 U.S.C. § 9613(f)(2).

2 VI. PAYMENT OF RESPONSE COSTS

3 5. Within 30 days of the effective date of this Consent Decree, Allegiance  
4 Healthcare Corporation shall pay to EPA \$550,000 in the manner described in this  
5 Section.

6 6. Within 30 days of the effective date of this Consent Decree, Philip  
7 Morris USA Inc. shall pay to EPA \$1,500,000 in the manner described in this  
8 Section.

9 7. Payment shall be made by FedWire Electronic Funds Transfer ("EFT")  
10 to the U.S. Department of Justice account in accordance with current EFT  
11 procedures, referencing USAO File Number 2003V03651, the EPA Region and  
12 Site Spill Number 0927, and DOJ Case Number 90-11-2-354/7. Payment shall be  
13 made in accordance with instructions provided to Settling Defendants by the  
14 Financial Litigation Unit of the U.S. Attorney's Office in the Central District of  
15 California following lodging of the Consent Decree.

16 8. At the time of payment, each Settling Defendant shall send a letter  
17 confirming the date and reference number of its FedWire EFT to the United States,  
18 EPA, and the Regional Financial Management Officer as provided in Section XV  
19 (Notices and Submissions) of this Decree.

20 9. The total amount to be paid pursuant to Paragraphs 5 and 6 shall be  
21 deposited in the Site 0927 San Gabriel Valley/Baldwin Park Special Account  
22 within the EPA Hazardous Substance Superfund to be retained and used to  
23 conduct or finance response actions at or in connection with the BPOU Area, or to  
24 be transferred by EPA to the EPA Hazardous Substance Superfund.

25 10. Within 30 days of the effective date of this Consent Decree, Allegiance  
26 Healthcare Corporation shall pay to DTSC \$16,050 in the form of a certified check  
27 or checks made payable to Cashier, California Department of Toxic Substances  
28 Control, and bearing on its face the docket number of this proceeding.

11. Within 30 days of the effective date of this Consent Decree, Philip Morris USA Inc. shall pay to DTSC \$44,138 in the form of a certified check or checks made payable to Cashier, California Department of Toxic Substances Control, and bearing on its face the docket number of this proceeding.

12. Each Settling Defendant shall send its certified check, along with a transmittal letter referencing the Baldwin Park Operable Unit, San Gabriel Valley Superfund Sites, Project Nos. 300133, 300345, 300349, and 300350, to:

Department of Toxic Substances Control  
Accounting/Cashier  
1001 I Street, 4<sup>th</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

13. Each Settling Defendant's payment to EPA and DTSC includes an amount for: (i) past Response Costs and DTSC Response Costs incurred at or in connection with the BPOU Area; (ii) projected future Response Costs and DTSC Response Costs to be incurred at or in connection with the BPOU Area; and (iii) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total Response Costs and DTSC Response Costs incurred or to be incurred at or in connection with the BPOU Area will exceed the estimated total Response Costs and DTSC Response Costs upon which Settling Defendants' payments are based.

VII. FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS

14. Interest on Late Payments. If a Settling Defendant fails to make any payment under Paragraphs 5, 6, 10, or 11 within 30 days of the effective date of this Consent Decree, then that Settling Defendant shall pay Interest on the unpaid balance, commencing on the date that payment is due and accruing through the date of payment. Each Settling Defendant shall make all payments required of that Settling Defendant by this Paragraph in the manner described in Paragraphs 7, 8, and 12 unless otherwise directed in writing by EPA or DTSC.

1        15. Stipulated Penalty.

2        a. In addition to the Interest required by Paragraph 14 (Interest on Late  
3 Payments), if a Settling Defendant fails to remit the payments to the United States  
4 required by Paragraphs 5 and 6 when due, then that Settling Defendant also shall  
5 pay stipulated penalties to the United States of \$1,000 per day for each day that its  
6 payment is late.

7        b. Stipulated penalties are due and payable to the United States within 30  
8 days of the date of the demand for payment of the penalties by the United States.  
9 All payments to the United States under this Paragraph shall be identified as  
10 "stipulated penalties" and shall be made by certified or cashier's check made  
11 payable to "EPA Hazardous Substance Superfund." The check, or a letter  
12 accompanying the check, shall reference the name and address of the party making  
13 payment, the Site name, EPA Region and Site Spill Number 0927, USAO File  
14 Number 2003V03651, and DOJ Case Number 90-11-2-354/7, and shall be sent to:

15                    EPA - Cincinnati Accounting Operations  
16                    Attn: Region 9 Receivables  
17                    P.O. Box 371099M  
                     Pittsburgh, PA 15251

18        c. In addition to the Interest required by Paragraph 14 (Interest on Late  
19 Payments), if a Settling Defendant fails to remit when due the payment to DTSC  
20 required of that Settling Defendant by Paragraphs 10 and 11, then that Settling  
21 Defendant also shall pay stipulated penalties to DTSC of \$1,000 per day for each  
22 day that the payment is late.

23        d. Stipulated penalties are due and payable to DTSC within 30 days of the  
24 date of the demand for payment of the penalties by DTSC. All payments to DTSC  
25 under this Paragraph shall be identified as "stipulated penalties" and shall be made  
26 by certified or cashier's check made payable to "Cashier, California Department of  
27 Toxic Substances Control." The check, or a letter accompanying the check, shall  
28 reference the name and address of the party making payment and the Site name,

1 and shall be sent to:

2 Department of Toxic Substances Control  
3 Accounting/Cashier  
4 1001 I Street, 4<sup>th</sup> Floor  
P.O. Box 806  
Sacramento, CA 95812-0806

5 e. At the time of payment of any stipulated penalties to the United States,  
6 the Settling Defendant making the payment shall send copies of check(s), and any  
7 accompanying transmittal letter(s), to the United States, EPA, and the Regional  
8 Financial Management Officer as provided in Section XV (Notices and  
9 Submissions) of this Consent Decree. At the time of payment of any stipulated  
10 penalties to DTSC, the Settling Defendant making the payment shall send copies  
11 of check(s), and any accompanying transmittal letter(s), to DTSC as provided in  
12 Section XV (Notices and Submissions).

13 f. Penalties shall accrue as provided in this Paragraph regardless of whether  
14 EPA or DTSC has notified the Settling Defendant of the violation or made a  
15 demand for payment, but need only be paid upon demand. All penalties shall  
16 begin to accrue on the day after payment is due and shall continue to accrue  
17 through the date of payment. Nothing herein shall prevent the simultaneous  
18 accrual of separate penalties for separate violations of this Consent Decree.

19 16. If the United States or DTSC brings an action to enforce this Consent  
20 Decree against a Settling Defendant, that Settling Defendant shall reimburse the  
21 Plaintiff(s) bringing the action for all costs of such action, including, but not  
22 limited to, costs of attorney time.

23 17. Payments made under this Section shall be in addition to any other  
24 remedies or sanctions available to Plaintiffs against a Settling Defendant by virtue  
25 of that Settling Defendant's failure to comply with the requirements of this  
26 Consent Decree.

27 18. Notwithstanding any other provision of this Section, the United States  
28 may, in its unreviewable discretion, waive payment of any portion of the stipulated

1 penalties that have accrued to the United States pursuant to this Consent Decree.  
2 Notwithstanding any other provision of this Section, DTSC may, in its  
3 unreviewable discretion, waive payment of any portion of the stipulated penalties  
4 that have accrued to DTSC pursuant to this Consent Decree. Payment of  
5 stipulated penalties shall not excuse a Settling Defendant from its payment  
6 obligation as required by Section VI or from performance of any other  
7 requirements of this Consent Decree applicable to that Settling Defendant.

8 **VIII. COVENANTS NOT TO SUE BY PLAINTIFFS**

9 19. In consideration of the respective payments that will be made by each  
10 Settling Defendant under the terms of this Consent Decree, and except as  
11 otherwise specifically provided in Section IX (Reservation of Rights), the United  
12 States covenants not to sue or to take administrative action against that Settling  
13 Defendant pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606,  
14 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, for performance of the Work  
15 and for recovery of Response Costs. In consideration of the payments that will be  
16 made by each Settling Defendant under the terms of this Consent Decree, and  
17 except as otherwise specifically provided in Section IX (Reservation of Rights),  
18 DTSC covenants not to sue or to take administrative action against that Settling  
19 Defendant pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606,  
20 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, and their respective State law  
21 counterparts, for performance of the Work and for recovery of DTSC Response  
22 Costs. These covenants not to sue shall take effect upon the receipt by EPA and  
23 DTSC of the payments required by Section VI (Payment of Response Costs) and  
24 any amount due under Section VII (Failure to Comply with Consent Decree  
25 Requirements). These covenants not to sue accorded to each Settling Defendant  
26 are conditioned upon satisfactory performance by that Settling Defendant of its  
27 obligations under this Consent Decree. These covenants not to sue extend only to  
28 the Settling Defendants and do not extend to any other person.

IX. RESERVATION OF RIGHTS

20. Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (a) to perform further response actions relating to the BPOU Area or (b) to reimburse the United States for additional costs of response

if, prior to Certification of Completion of the Remedial Action:

(1) conditions at the BPOU Area, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment. If EPA makes such a determination, DTSC reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants to reimburse DTSC for additional costs of response.

21. Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (a) to perform further response actions relating to the BPOU Area or (b) to reimburse the United States for additional costs of response

1 if, subsequent to Certification of Completion of the Remedial Action:

2 (1) conditions at the BPOU Area, previously unknown to EPA, are  
3 discovered, or

4 (2) information, previously unknown to EPA, is received, in whole or in  
5 part,

6  
7 and EPA determines that these previously unknown conditions or this information  
8 together with other relevant information indicate that the Remedial Action is not  
9 protective of human health or the environment. If EPA makes such a  
10 determination, DTSC reserves, and this Consent Decree is without prejudice to,  
11 the right to institute proceedings in this action or in a new action, or to issue an  
12 administrative order seeking to compel Settling Defendants to reimburse DTSC  
13 for additional costs of response.

14 22. For purposes of Paragraph 20, the information and the conditions  
15 known to EPA shall include only that information and those conditions known to  
16 EPA as of May 31, 1999, the date of the ESD supplementing the ROD, and set  
17 forth in the ROD, the ESD, and the administrative record supporting the ROD and  
18 the ESD. For purposes of Paragraph 21, the information and the conditions known  
19 to EPA shall include only that information and those conditions known to EPA as  
20 of the date of Certification of Completion of the Remedial Action, and set forth in  
21 the ROD, the ESD, the administrative record supporting the ROD and the ESD,  
22 and the post-ROD administrative record.

23 23. General Reservation of Rights. The covenants not to sue set forth in  
24 Paragraph 19 do not pertain to any matters other than those expressly specified  
25 therein. The United States and DTSC reserve, and this Consent Decree is without  
26 prejudice to, all rights of the United States and DTSC against Settling Defendants  
27 with respect to all other matters including, but not limited to, the following:

28 (1) claims against a Settling Defendant based on a failure by that Settling



1 Defendant to meet a requirement of this Consent Decree;

2 (2) liability of a Settling Defendant arising from the past, present, or future  
3 disposal, release, or threat of release of hazardous substances, pollutants,  
4 contaminants, or solid wastes outside of the BPOU Area;

5 (3) liability of a Settling Defendant for disposal of hazardous substances,  
6 pollutants, contaminants, or solid wastes at the BPOU Area by that Settling  
7 Defendant after signature of this Consent Decree, other than as provided in the  
8 ROD, as supplemented by the ESD, the Remedial Action, or otherwise ordered by  
9 EPA;

10 (4) liability of a Settling Defendant for damages for injury to, destruction  
11 of, or loss of natural resources, and for the costs of any natural resource damage  
12 assessments;

13 (5) a Settling Defendant's criminal liability;

14 (6) liability of a Settling Defendant for additional operable units at the Site,  
15 or a final response action, including, but not limited to, the final Record of  
16 Decision for the BPOU Area;

17 (7) liability for injunctive relief or administrative order enforcement under  
18 Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions that are not  
19 within the BPOU Area; and

20 (8) liability for costs incurred or to be incurred that are not within the  
21 definition of Response Costs or DTSC Response Costs.

22 24. Notwithstanding any other provision of this Consent Decree, the United  
23 States and DTSC retain all authority and reserve all rights to take any and all  
24 response actions authorized by law.

25 **X. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS**

26 25. Settling Defendants hereby covenant not to sue and agree not to assert  
27 any claims or causes of action against the United States or DTSC, or their  
28 contractors or employees, with respect to the Response Costs, DTSC Response

1 Costs, the Work or this Consent Decree, including, but not limited to:

2 a. any direct or indirect claim for reimbursement from the Hazardous  
3 Substance Superfund (established pursuant to the Internal Revenue Code, 26  
4 U.S.C. § 9507) based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42  
5 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

6 b. any claims arising out of response actions at or in connection with the  
7 BPOU Area, including any claims under the United States Constitution, the  
8 California Constitution, the Tucker Act, 42 U.S.C. § 1491, the Equal Access to  
9 Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

10 c. any claims against the United States, including any department, agency,  
11 or instrumentality of the United States, under CERCLA Sections 107 or 113  
12 related to the BPOU Area;

13 d. any claims against the State of California, including any department,  
14 agency, or instrumentality of the State of California, under CERCLA Sections 107  
15 or 113 related to the BPOU Area; or

16 e. any claims against the United States or DTSC arising out of response  
17 activities at the BPOU Area, including claims based on EPA's and DTSC's  
18 selection of response actions, oversight of response activities or approval of plans  
19 for such activities.

20 26. Except as provided in Paragraph 28 (Waiver of Claims) and Paragraph  
21 33 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not  
22 apply in the event the United States or DTSC brings a cause of action or issues an  
23 order pursuant to the reservations set forth in Paragraph 23, but only to the extent  
24 that Settling Defendants' claims arise from the same response action or response  
25 costs that the United States or DTSC is seeking pursuant to the applicable  
26 reservation.

27 27. Nothing in this Consent Decree shall be deemed to constitute approval  
28 or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42

1 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

2 28. Settling Defendants hereby agree not to assert any CERCLA claims or  
3 causes of action that they may have for all matters relating to Response Costs,  
4 DTSC Response Costs, or the Work, including for contribution, against any  
5 person other than Settling Defendants' insurance carriers and potentially  
6 responsible parties who have received in the past or receive in the future special  
7 notice from EPA in connection with the BPOU Area and who are not signatories  
8 to this Consent Decree or another Consent Decree in connection with the BPOU  
9 Area, for damages or costs of any kind relating to response actions and costs  
10 incurred at the BPOU Area, including without limitation, claims under Sections  
11 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, common law claims of  
12 negligence, contribution, equitable indemnity and restitution, and claims under  
13 any other federal, state or local statutory or common law. This waiver shall not  
14 apply with respect to any defense, claim, or cause of action that a Settling  
15 Defendant may have against any person if such person asserts a claim or cause of  
16 action relating to the BPOU Area against such Settling Defendant.

17 XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

18 29. Except as expressly provided in Paragraph 28, nothing in this Consent  
19 Decree shall be construed to create any rights in, or grant any cause of action to,  
20 any person not a Party to this Consent Decree. The preceding sentence shall not  
21 be construed to waive or nullify any rights that any person not a signatory to this  
22 Decree may have under applicable law. Except as provided in Paragraph 28, each  
23 of the Parties expressly reserves any and all rights (including, but not limited to,  
24 any right to contribution), defenses, claims, demands, and causes of action which  
25 each Party may have with respect to any matter, transaction, or occurrence relating  
26 in any way to the Site against any person not a Party hereto. The Parties intend  
27 that neither this Decree nor its contents shall constitute evidence in any proceeding  
28 of any liability or obligation whatsoever of any Settling Defendant, except that it

1 may be used by the United States, DTSC, or the Settling Defendants in any action  
2 brought to enforce or interpret this Decree and the rights and obligations of the  
3 parties hereunder.

4 30. The Parties agree, and by entering this Consent Decree this Court finds,  
5 that the Settling Defendants are entitled, as of the effective date of this Consent  
6 Decree, to protection from contribution actions or claims as provided by CERCLA  
7 Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and its respective State law counterpart,  
8 for "matters addressed" in this Consent Decree. For purposes of this Paragraph,  
9 "matters addressed" shall mean (a) the Work, (b) all response costs incurred prior  
10 to the entry of this Consent Decree by the United States, DTSC, or any other  
11 person at or in connection with the BPOU Area, and (c) all response costs related  
12 to the implementation or oversight of the Work to be incurred after the entry of  
13 this Consent Decree by the United States, DTSC, or any other person at or in  
14 connection with the BPOU Area. The "matters addressed" in this Consent Decree  
15 do not include those response costs or response actions as to which the United  
16 States or DTSC has reserved its rights under this Consent Decree (except for  
17 claims for failure to comply with this Decree), in the event that the United States  
18 or DTSC asserts rights against Settling Defendants coming within the scope of  
19 such reservations.

20 31. The Settling Defendants agree that with respect to any suit or claim for  
21 contribution brought by them for matters related to this Consent Decree, they will  
22 notify the United States and DTSC in writing no later than 60 days prior to the  
23 initiation of such suit or claim.

24 32. The Settling Defendants also agree that with respect to any suit or claim  
25 for contribution brought against them for matters related to this Consent Decree,  
26 they will notify in writing the United States and DTSC within 10 days of service  
27 of the complaint on them. In addition, Settling Defendants shall notify the United  
28 States and DTSC within 10 days of service or receipt of any Motion for Summary

1 Judgment and within 10 days of receipt of any order from a court setting a case for  
2 trial.

3 33. In any subsequent administrative or judicial proceeding initiated by the  
4 United States or DTSC for injunctive relief, recovery of response costs, or other  
5 relief relating to the Site, Settling Defendants shall not assert, and may not  
6 maintain, any defense or claim based upon the principles of waiver, res judicata,  
7 collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon  
8 any contention that the claims raised by the United States or DTSC in the  
9 subsequent proceeding were or should have been brought in the instant case;  
10 provided, however, that nothing in this Paragraph affects the enforceability of the  
11 covenants not to sue set forth in Section VIII (Covenants Not to Sue by Plaintiffs).

## 12 XII. ACCESS

13 34. If any of the Settling Defendants own or control any property where  
14 access is needed to implement response activities at the Site, then, commencing on  
15 the date of lodging of the Consent Decree, such Settling Defendants shall provide  
16 the United States, the State, and their representatives, including EPA and its  
17 contractors, with access at all reasonable times to such property, for the purpose of  
18 conducting any response activity related to the Site, including, but not limited to,  
19 the following activities:

- 20 a. Monitoring, investigation, removal, remedial or other activities at the  
21 Site;
- 22 b. Verifying any data or information submitted to the United States or the  
23 State;
- 24 c. Conducting investigations relating to contamination at or near the Site;
- 25 d. Obtaining samples;
- 26 e. Assessing the need for, planning, or implementing additional response  
27 actions at or near the Site;
- 28 f. Inspecting and copying records, operating logs, contracts, or other

documents maintained or generated by Settling Defendants or their agents, consistent with Section XIII (Access to Information); and

g. Assessing Settling Defendants' compliance with this Consent Decree.

35. Notwithstanding any provision of this Consent Decree, the United States and the State of California retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

### XIII. ACCESS TO INFORMATION

36. Settling Defendants shall provide to EPA and DTSC, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

#### 37. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and DTSC, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and

1 other information are privileged under the attorney-client privilege or any other  
2 privilege recognized by federal law. If the Settling Defendants assert such a  
3 privilege in lieu of providing documents, they shall provide the Plaintiffs with the  
4 following: (1) the title of the document, record, or information; (2) the date of the  
5 document, record, or information; (3) the name, title, affiliation (e.g., company or  
6 firm), and address of the author of the document, record, or information; (4) the  
7 name and title of each addressee and recipient; (5) a description of the subject of  
8 the document, record, or information; and (6) the privilege asserted by Settling  
9 Defendants. However, no document, report or other information created or  
10 generated pursuant to the requirements of the Consent Decree shall be withheld on  
11 the grounds that it is privileged.

12 38. No claim of confidentiality shall be made with respect to any data,  
13 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,  
14 scientific, chemical, or engineering data, or any other documents or information  
15 evidencing conditions at or around the Site.

#### 16 XIV. RETENTION OF RECORDS

17 39. Until 10 years after the Settling Defendants' receipt of EPA's  
18 notification, transmitted pursuant to Paragraph 42, of the issuance of EPA's  
19 Certification of Completion of the Work, each Settling Defendant shall preserve  
20 and retain all records and documents now in its possession or control, or which  
21 come into its possession or control, that relate in any manner to response actions  
22 taken at the BPOU Area or liability of any person for response actions conducted  
23 and to be conducted at the BPOU Area, regardless of any corporate retention  
24 policy to the contrary.

25 40. At the conclusion of this document retention period, Settling  
26 Defendants shall notify the United States and DTSC at least 90 days prior to the  
27 destruction of any such records or documents, and, upon request by the United  
28 States or DTSC, Settling Defendants shall deliver any such records or documents

1 to EPA or DTSC. The Settling Defendants may assert that certain documents,  
2 records and other information are privileged under the attorney-client privilege or  
3 any other privilege recognized by federal law. If the Settling Defendants assert  
4 such a privilege, they shall provide the Plaintiffs with the following: (1) the title  
5 of the document, record, or information; (2) the date of the document, record, or  
6 information; (3) the name, title, affiliation (e.g., company or firm), and address of  
7 of the author of the document, record, or information; (4) the name and title of  
8 each addressee and recipient; (5) a description of the subject of the document,  
9 record, or information; and (6) the privilege asserted by Settling Defendants.  
10 However, no document, report or other information created or generated pursuant  
11 to the requirements of the Consent Decree shall be withheld on the grounds that it  
12 is privileged.

13 41. Each Settling Defendant hereby certifies individually that, to the best of  
14 its knowledge and belief, after thorough inquiry, it has not altered, mutilated,  
15 discarded, destroyed or otherwise disposed of any records, documents or other  
16 information relating to its potential liability regarding the BPOU Area since  
17 notification of potential liability by the United States or DTSC or the filing of suit  
18 against it regarding the BPOU Area, and that it has fully complied with any and all  
19 EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA,  
20 42 U.S.C. §§ 9604(e), 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### 21 XV. NOTICES AND SUBMISSIONS

22 42. Whenever, under the terms of this Consent Decree, written notice is  
23 required to be given or a report or other document is required to be sent by one  
24 Party to another, it shall be directed to the individuals at the addresses specified  
25 below, unless those individuals or their successors give notice of a change to the  
26 other Parties in writing. All notices and submissions shall be considered effective  
27 upon receipt, unless otherwise provided. Written notice as specified herein shall  
28 constitute complete satisfaction of any written notice requirement of the Consent



1 Decree with respect to the United States, EPA, DTSC, and the Settling  
2 Defendants, respectively.

3 As to the United States:

4 Chief, Environmental Enforcement Section  
5 Environment and Natural Resources Division  
6 U.S. Department of Justice  
7 P.O. Box 7611, Ben Franklin Station  
8 Washington, D.C. 20044  
9 Re: DJ # 90-11-2-354/7  
10 and

11 Robert D. Mullaney  
12 Trial Attorney  
13 Environmental Enforcement Section  
14 U.S. Department of Justice  
15 301 Howard Street, Suite 1050  
16 San Francisco, CA 94105

17 As to EPA:

18 Lewis C. Maldonado, ORC-3  
19 Assistant Regional Counsel  
20 United States Environmental Protection Agency  
21 75 Hawthorne Street  
22 San Francisco, CA 94105

23 and

24 Wayne Praskins, SFD-7-3  
25 EPA Project Coordinator  
26 United States Environmental Protection Agency  
27 75 Hawthorne Street  
28 San Francisco, CA 94105

As to the Regional Financial Management Officer:

Joe Schmidt, PMD-5  
United States Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

As to DTSC:

Jacalyn Spizman  
DTSC Project Coordinator  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, CA 90630

and

1 Ann Rushton  
Office of the Attorney General  
2 300 South Spring Street  
Los Angeles, CA 90013  
3

4 As to the Settling Philip Morris Defendants:

5 Manning Gasch, Jr.  
Hunton & Williams  
6 951 E. Byrd Street  
Richmond, VA 23019  
7

8 As to the Settling Allegiance Healthcare Defendants:

9 George Kokkines  
Senior Counsel, Litigation  
10 Cardinal Health, Inc.  
1430 Waukegan Road  
11 McGaw Park, Illinois 60085

12 and

13 Charles A. Echols  
Director, Environment, Health and Safety  
14 Cardinal Health, Inc.  
1430 Waukegan Road  
15 MP KB-B3  
McGaw Park, IL 60085-6787  
16

17 XVI. EFFECTIVE DATE

18 43. The effective date of this Consent Decree shall be the date upon which  
19 this Consent Decree is entered by the Court, except as otherwise provided herein.

20 XVII. RETENTION OF JURISDICTION

21 44. This Court retains jurisdiction over this matter for the purpose of  
22 interpreting and enforcing the terms of this Consent Decree.

23 XVIII. INTEGRATION/APPENDICES

24 45. This Consent Decree and its appendices constitute the final, complete  
25 and exclusive agreement and understanding among the Parties with respect to the  
26 settlement embodied in this Consent Decree. The Parties acknowledge that there  
27 are no representations, agreements, or understandings relating to the settlement  
28 other than those expressly contained in this Consent Decree. The following

1 appendices are attached to and incorporated into this Consent Decree:

2 "Appendix A" is the map of the BPOU Area;

3 "Appendix B" is a copy of the ROD; and

4 "Appendix C" is a copy of the ESD.

5 XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

6 46. This Consent Decree shall be lodged with the Court for a period of not  
7 less than thirty (30) days for public notice and comment. The United States  
8 reserves the right to withdraw or withhold its consent if the comments regarding  
9 the Consent Decree disclose facts or considerations which indicate that the  
10 Consent Decree is inappropriate, improper, or inadequate. Settling Defendants  
11 consent to the entry of this Consent Decree without further notice.

12 47. If for any reason the Court should decline to approve this Consent  
13 Decree in the form presented, this agreement is voidable at the sole discretion of  
14 any Party and the terms of the agreement may not be used as evidence in any  
15 litigation between the Parties.

16 XX. SIGNATORIES/SERVICE

17 48. Each undersigned representative of a Settling Defendant to this Consent  
18 Decree, the Assistant Attorney General for the Environment and Natural  
19 Resources Division of the United States Department of Justice, or his delegate,  
20 and the Deputy Attorney General of the California Department of Justice certifies  
21 that he or she is fully authorized to enter into the terms and conditions of this  
22 Consent Decree and to execute and legally bind such Party to this document.

23 49. Each Settling Defendant hereby agrees not to oppose entry of this  
24 Consent Decree by this Court or to challenge any provision of this Consent Decree  
25 unless the United States has notified the Settling Defendants in writing that it no  
26 longer supports entry of the Consent Decree.

27 50. Each Settling Defendant shall identify, on the attached signature page,  
28 the name, address and telephone number of an agent who is authorized to accept

1 service of process by mail on behalf of that Party with respect to all matters arising  
2 under or relating to this Consent Decree. Settling Defendants hereby agree to  
3 accept service in that manner and to waive the formal service requirements set  
4 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local  
5 rules of this Court, including, but not limited to, service of a summons.

6 **XXI. FINAL JUDGMENT**

7 51. Upon approval and entry of this Consent Decree by the Court, this  
8 Consent Decree shall constitute a final judgment between and among the United  
9 States and the Settling Defendants and between and among DTSC and the Settling  
10 Defendants. The Court finds that there is no just reason for delay and therefore  
11 enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

12  
13  
14 Dated: 12/12/05

Christina A. Snyder  
United States District Judge

SLAINED

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States and California Department of Toxic Substances Control v.  
3 Allegiance Healthcare Corporation and Philip Morris USA Inc., relating to the  
4 BPOU Area.

5  
6 FOR THE UNITED STATES OF AMERICA  
7  
8

9 Dated: 9/16/05

Kelly A. Johnson

Kelly A. Johnson  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

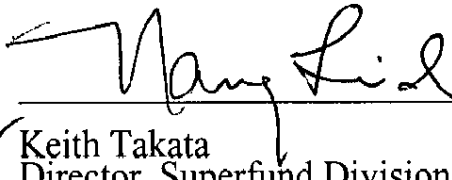
10  
11  
12  
13  
14  
15  
16 Dated: 10-25-05

Robert D. Mullaney

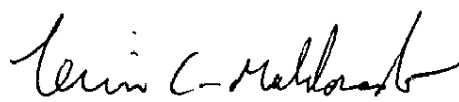
Robert D. Mullaney  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
301 Howard Street, Suite 1050  
San Francisco, California 94105

1  
2  
3 Dated:

9/23/05


  
60 Keith Takata  
Director, Superfund Division  
Region IX  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 941058  
9 Dated:

9-27-05

  
Lewis C. Maldonado  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
San Francisco, CA 94105

1 FOR THE STATE OF CALIFORNIA DEPARTMENT OF TOXIC  
2 SUBSTANCES CONTROL

3 Dated: 8/26/05

  
Thomas Cota, Chief  
Southern California Cleanup Operations  
Branch, Cypress Office  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

8  
9 Dated: 10 - 5 - 05

Ann Rushton  
Ann Rushton  
Deputy Attorney General  
California Department of Justice  
300 South Spring Street  
Los Angeles, California 90013

SCANNED

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States and State of California Department of Toxic Substances  
3 Control v. Allegiance Healthcare Corporation and Philip Morris USA Inc., relating  
4 to the BPOU Area.

5 FOR ALLEGIANCE HEALTHCARE CORPORATION

6 Dated: 6/4/04

Chal A Echols

7 Charles A. Echols  
8 Director, Environment, Health and Safety  
9 Cardinal Health, Inc.  
10 1430 Waukegan Road  
11 MP KB-B3  
12 McGaw Park, IL 60085-6787  
13 Tel: (847) 578-4116  
14 Fax: (847) 578-4225

15 Agent Authorized to Accept Service on Behalf of Above-signed Party:

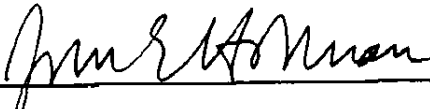
16 The Prentice-Hall Corporation System, Inc.  
17 33 North LaSalle Street  
18 Chicago, IL 60602  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States and State of California Department of Toxic Substances  
3 Control v. Allegiance Healthcare Corporation and Philip Morris USA Inc., relating  
4 to the BPOU Area.

5 FOR PHILIP MORRIS USA INC.

6 Dated: 06.17.04

7   
8 John E. Holleran  
9 Senior Vice President  
10 Compliance and Brand Integrity  
11 Philip Morris USA Inc.

12 Agent Authorized to Accept Service on Behalf of Above-signed Party:

13 Manning Gasch, Jr.  
14 Hunton & Williams  
15 951 E. Byrd Street  
16 Richmond, VA 23019  
17 Tel.: (804) 788-8342  
18  
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28



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
OFFICE OF THE CLERK

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**THE EXHIBIT(S) AND/OR  
ATTACHMENT(S) TO THIS DOCUMENT  
ARE AVAILABLE IN “THE RECORDS  
SECTION” OF THE CLERK’S OFFICE.**